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HAROLD B. WILLEY,

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 784

PETER CORRADO, also known as Pietro Corrado,
Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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The petitioner, Peter Corrado, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Sixth Circuit (R. 523a), affirming a judgment of the District Court for the Eastern District of Michigan denaturalizing petitioner in 1954 upon the ground that he obtained American citizenship in 1931 illegally and by fraud (R. 509a).

Opinions Below

The opinion of the Court of Appeals, set forth in the Appendix, *infra*, pp. 25-33 is reported at 227 F. 2d 780. The opinion of the District Court is set forth at pages 15-23 of the Appendix and is reported at 121 F. Supp. 75.

Jurisdiction

The judgment of the Court of Appeals was entered on December 16, 1955. By order of Mr. Justice Reed the time for filing this petition has been extended to and including April 14, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether mere proof of the non-disclosure of an arrest record is clear and convincing evidence to sustain a judgment of denaturalization for fraud or illegality where the District Court specifically finds that the revelation of such arrest record at the time of naturalization would not necessarily have resulted in a denial of citizenship.

2. Whether the burden of proof in denaturalization cases described by this Court in *Klapprott* v. *United States*, 335 U.S. 601, 612 (1948) as "substantially identical with that required in criminal cases—proof beyond a reasonable doubt" was followed by the Court below which stated "it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case."

3. Whether intrinsic fraud is a basis for denaturalization.

4. Whether a naturalization judgment is *res judicata* upon the issue of good moral character.

Statutes Involved

Section 1, Paragraph Fourth of the Naturalization Act of June 29, 1906 [34 Stat. 598; 8 U.S.C. 386], in force in 1931, provided in part as follows:

> "Fourth: No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this subdivision he has behaved as a person

of good moral character attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Section 338(a) of the Nationality Act of 1940 [54 Stat. 1137, 8 U.S.C. 738(a)] provides as follows:

"It shall be the duty of the United States district attorneys for the respective districts, upon affidavits showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 701 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such persons to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

Statement

Petitioner, a native of Italy, came here at the age of 17 on February 3, 1921. He is married to an American citizen and is the father of two American born children. (R. 483a).

In May of 1930 petitioner filed his preliminary form for a petition (Ex. 1) and in 1931 his petition for American citizenship (R. 322a, 323a, 478a-483a). Petitioner, who had gone no further than the third grade and could not read English very well (R. 426a), found the preliminary form for a petition "too deep" and went to a store opposite the courthouse where he was assisted in filling out the form (R. 429a-430a). Although the trial judge originally disbelieved this (R. 470a), after the parties stipulated that professional helpers maintained establishments for assistance to citizenship applicants near the Federal Building in Brooklyn in May of 1930 (R. 474a), the District Court found

that it was not unusual for these forms to be executed "at one of the stores opposite the Federal Court in Brooklyn" (R. 503a). It was further found by the District Court below that petitioner did not fill out the citizenship application (Ex. 1; R. 478a-479a) although he signed it (R. 500a).

The application contains a "no" in a handwriting not that of petitioner's, to question 29 which asks whether the applicant has ever been arrested (R. 479a). Petitioner testified that he paid a man in one of the stores opposite the Federal Court in Brooklyn to fill out the form, that he acknowledged his arrest record but was told as long as he didn't serve time, it was not necessary to list the arrest (R. 431a-432a, 503a). In fact, petitioner was arrested prior to naturalization on several occasions (R. 13a), but in no instance was he sent to jail for any offense. All but two arrests resulted in discharges or dismissals. He was fined $25.00 and $10.00 for disturbing the peace in 1923 and for frequenting a gambling place in 1927 (R. 500a-501a).

The Government charged in its amended complaint herein and at pretrial that petitioner misrepresented his arrest record to Frank L. White during his preliminary examination for citizenship and to Warren C. Young, designated examiner. It was alleged that such false answer by petitioner prevented proper investigation and "was made to induce the Immigration and Naturalization Service to make an unconditional recommendation to the Court that his petition be granted * * * and to procure naturalization in violation of law" (R. 13a-14a; 19a-20a). In support of these allegations petitioner's arrest record was introduced and Frank L. White was produced as a witness. White testified that he had no independent recollection of the petitioner or of the citizenship application in his case (R. 59a, 71a), and that he had no knowledge as to who prepared the citizenship application (R. 80a). The Court

below specifically found that White "couldn't be expected to remember examining this individual" (R. 506).

White stated that he made no recommendations to the Court and that had he known about the arrest record of petitioner he would have either recommended further investigation or "let the designated examiner take it from there on" (R. 173a, 179a-180a). What the designated examiner, Warren C. Young, would have recommended to the Court could not be established in view of the fact that he was dead (R. 177a-178a; 98a). The District Court acknowledged that what a designated examiner would have recommended herein, if he knew all the facts, depended upon the designated examiner involved (R. 98a). The Court further ruled that it wasn't necessary to prove "what would have happened if the Department knew the truth" (R. 182a).

The Government contended, and the District Court agreed that a case was established for denaturalization if it was shown that petitioner "answered one way and the truth was the other" (R. 181a). The District Court ruled that the petitioner's arrest record was material and that fraud was established although:

> "If he had revealed that he had been arrested it does not necessarily follow that he would have been denied citizenship, but this was information that the examining officers were charged by law with obtaining and to which they were entitled." (R. 504a).

The Court of Appeals affirmed, stating (R. 529a):

> "Upon analysis, the issue is not whether naturalization would have been denied appellant had he revealed his numerous arrests, but whether, by his false answers, the Government was denied the opportunity of investigating the moral character of appellant and the facts relating to his eligibility for citizenship. . . .

> Where fraud has been practiced by the alien in procuring citizenship, it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case. It will suffice to show that the applicant lied concerning a material fact which, if revealed, might have prevented his acquisition of citizenship."

Reasons For Granting the Writ

The decision below establishes a new rule of law and a new standard of proof with regard to fraud, and with regard to denaturalization cases in particular. This standard is in conflict with decisions of this Court and other circuits. If it is to prevail, it will not only affect the great number of denaturalization cases now pending in the courts, but all future cases. If the Government may prevail and establish fraud in denaturalization cases by showing mere falsity as here without proof of actual deception, does it not follow that similar rulings will follow in tax cases and in other fields of governmental activity?

1. The District Court denaturalized petitioner in 1954 upon a specific ruling that it was not necessary to decide whether petitioner would have been denied citizenship in 1931 had all the facts been revealed (R. 504a). The Court of Appeals approved this ruling stating that the issue is not whether naturalization would have been denied had petitioner revealed his arrest record (R. 529a).

Prior to the decision below, the Court of Appeals for the Third Circuit observed that no decision could be found "where citizenship had been revoked for failure to disclose facts the revelation of which would have justified refusal of citizenship in the first place." *United States* v. *Kessler*, 213 F. 2d 53, 58 Note 9 (C.A. 3, 1954). The decision below is the first appellate ruling in the history of denaturalization cases authorizing revocation of citizenship without

proof of actual deception. It is in conflict with the Third Circuit's decision in *United States* v. *Kessler, supra* and *United States* v. *Anastasio*, 226 F. 2d 912 (C.A. 3, 1955), now pending upon an application for certiorari (No. 691, October, 1955, Term). In the *Anastasio* case it was said at 226 F. 2d at 916, 917, 919:

> "A denaturalization proceeding is essentially an action for rescission. As in all rescission actions, the government in order to prevail must establish that (1) the defendant was guilty of fraud or misrepresentations and (2) *it was deceived thereby.*" (Italics supplied).
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> "In a denaturalization case '. . . the facts and the law should be construed as far as is reasonably possible in favor of the citizen.'
>
> "An essential element of fraud is that the complaining party must have been deceived by the fraudulent statements of the accused. If this element is lacking the accused has failed in his purpose to defraud.
>
> "Applying these principles to the instant case it is obvious that the government has failed to establish by the strict burden of proof imposed upon it that the defendant had 'deceived' it into recommending citizenship in 1943"
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> • • • • • • •
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> "It must be remembered that we are here concerned not with a naturalization proceeding where a privilege is sought, but with an action to denaturalize. As such the burden lies heavily with the government to cut square corners. The Supreme Court has spoken clearly and often on the independent close scrutiny that courts should make in such proceedings."

Contrary to these decisions and contrary to the normal rule applicable to the revocation of judgments, revocation of citizenship has been decreed herein without proof of actual deception or what would have occurred in the 1931 naturalization proceedings had all the facts been known. Citizenship may not be taken away without the clearest sort of justification and proof. *Baumgartner* v. *United States,* 322 U.S. 665 (1944); *Schneiderman* v. *United States,* 320 U.S. 118 (1943); *Knauer* v. *United States,* 328 U.S. 654 (1946); *Landon* v. *Gonzales,* 350 U.S. 920 (1955). Nevertheless, the court below by sanctioning denaturalization without proof as to what the naturalization court would have done, has necessarily authorized revocation of citizenship without the clearest sort of justification and proof—without clear and convincing evidence In view of the serious consequences of denaturalization, in view of the conflict with this Court's decisions and the Third Circuit, and in view of the novel rule here enunciated for the first time by an appellate tribunal, it is submitted that a writ of certiorari should issue.

2. The scope of the novel rule of fraud announced below becomes more far reaching in view of the Circuit Court's refusal to observe the exacting standards prescribed by this Court in denaturalization cases. The Court below announced that "it is not required that the Government meet the standard necessary for conviction in a criminal case" (R. 529a). This is directly contrary to the decisions of this Court in *Klapprott* v. *United States,* 335 U. S. 601, 612 (1948), and *Baumgartner* v. *United States,* 322 U. S. 665 (1944). In the *Baumgartner* case this Court refused to permit denaturalization where the evidence "lacks that solidity of proof which leaves no troubling doubt." In the *Klapprott* case it was observed:

> ". . . because of the grave consequences incident to denaturalization proceedings, we have held that a

burden rests on the government to prove its charges in such cases by clear, unequivocal and convincing evidence which does not leave the issue in doubt. *Schneiderman* v. *United States*, 320 U. S. 118, 87 L. ed. 1796, 1819, 63 S. Ct. 1333. This burden is substantially identical with that required in criminal cases—proof beyond a reasonable doubt."

The court below has refused to follow the decisions of this Court in so vital a field as denaturalization which involves grave consequences to the individual and his family. The gravity of denaturalization consequences and the importance of applying a proper standard of proof in the many denaturalization cases now pending in the courts warrant review of the instant action by this Court.

3. In *United States* v. *Throckmorton*, 98 U. S. 61, 68 (1879), this Court said:

> "* * * that the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic, or collateral, to the matter tried by the first court, and not to a fraud in the matter on which the decree was rendered."

See also: *Kibbe* v. *Benson*, 17 Wall. 625 (1874).

Thereafter, this Court noted on several occasions that naturalization had all the incidents of a regular judicial proceeding. *Tutun* v. *United States*, 270 U.S. 568, 576-578 (1925); *United States* v. *Macintosh*, 283 U.S. 605, 615 (1931); *Bindczyck* v. *Finucane*, 342 U.S. 76 (1951).

In *Knauer* v. *United States*, 328 U.S. 654 (1946), this Court modified the normal rule applicable to judgments generally and held that fraud in taking the oath of allegiance was within the reach of the denaturalization stat-

ute. The issue here involved, however, was expressly left open, for the Court stated (at 328 U.S. 670, 671):

> "We need not consider the extent to which a decree of naturalization may constitute a final determination of issues of fact, the establishment of which Congress has made conditions precedent to naturalization. Those facts relate to the past—to behavior and conduct. But the oath is in a different category."

Although some courts refuse to denaturalize for intrinsic fraud, *United States* v. *Kusche*, 56 F. Supp. 201, 217, 218 (S.D. Calif. 1944); *United States* v. *Gleeson*, 90 Fed. 778 (C.A. 2, 1898), others, like the Court below assume that this Court's decision in the *Knauer* case has removed all barriers to denaturalization for fraud whether it be designated intrinsic or extrinsic. However, we submit that denaturalization for intrinsic fraud, relating to past conduct, which is here involved, has not been approved by any Supreme Court decision. Before the serious consequence of denaturalization is authorized upon this basis, this Court should decide whether a decree of naturalization constitutes a final determination of the issue of past conduct.

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4. A judgment of naturalization is *res judicata* upon the issues of good moral character and attachment. It is clear that had petitioner been denied citizenship upon a finding that good moral character was absent, such finding would have been *res judicata*. *In re Hartman*, 232 Fed. 797 (D.C. Iowa 1916); *In re Stasinopulos*, 21 F. 2d 71 (D.C. Mich. 1927). A decree of naturalization is a judgment in the full judicial sense. In the instant case the issue of good moral character was distinctly before the naturalization court. The Designated Naturalization Examiner, Warren C. Young, now deceased, found petitioner of sufficient good moral character, and recommended approval of his application by the Court which granted him citizenship.

In *United States* v. *Moser*, 266 U.S. 236, 242 (1924), this Court said:

> ". . . a fact, question or right distinctly adjudged in the original action, cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or an erroneous application of the law."

See also: *Tait* v. *Western Md. R. Co.*, 289 U.S. 620 (1933); *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371 (1940); *Wilson Cypress Co.* v. *Atlantic Coast Line R.R. Co.*, 109 F. 2d 623 (C.A. 5, 1940), certiorari denied, 310 U.S. 653.

Applying these principles to the instant case, it is evident that relitigation of the issue of good moral character should not be permitted. The courts have frequently considered the issues settled before the naturalization court *res judicata.*

The issue of residence is within the scope of *res judicata. United States* v. *Srednik*, 19 F. 2d 71 (C.A. 3, 1927).

In *United States* v. *Pandit*, 15 F. 2d 285 (C.A. 9, 1926), certiorari denied, 273 U.S. 759, it was held that the issue of racial eligibility could not be relitigated.

Even as a finding of bad moral character cannot be relitigated (*In re Hartman, supra; In re Stasinopulos, supra*), it has been held that the finding of good moral character is settled by the decree of naturalization. *United States* v. *Bischof*, 48 F. 2d 538 (C.A. 2, 1931). In the *Bischof* case it was said with relation to the naturalization court's finding of good moral character at page 539:

> ". . . where the questions of fact are determined by the court admitting to citizenship, such findings of fact are regarded as conclusive. *United States* v. *Srednik*, 19 F. 2d 71 (C.A. 3); *United States* v. *Richmond*, 17

> F. 2d 28 (C.A. 3). The remedy of the government, if it feels aggrieved by the decision on such findings of fact, is by appeal. . . . The question of fact determined by the state Supreme Court in favor of the applicant formed no basis for the claim of fraudulent or illegal means used in obtaining the certificate. The government having appeared and contested the one issue before the court, it is concluded by that decision on the question of fact thus presented."

The decision below, however, is in conflict with these views.

The same public policy of expediency, justice and public tranquility which produced the doctrine of *res judicata* in the legal systems of civilized nations and in our legal jurisprudence, calls for the application of *res judicata* in denaturalization cases, particularly here where it is sought to roll back the clock more than twenty years. Accordingly, the Government should be precluded from now contesting the issue of good moral character, and there should be no basis herein for a finding of fraud or illegal procurement.

Conclusion

Because of the importance of the problem presented herein, the grave consequences of denaturalization, the conflicts between the decision below and this Court's decisions as well as that of other circuits, it is respectfully submitted that a writ of certiorari should issue.

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